
2003 Wis Eth Bd 08
LOCAL CODE -- DISQUALIFICATION

The Ethics Board advises that a town chair should not simultaneously participate in Town decisions concerning services provided to the Town by a company owned by the same individual that owns the company of which the town chair is an employee.

Facts

¶1 This opinion is based upon these understandings:

- a. You represent a Town.
- b. You write on behalf of the town chair.
- c. The town chair is an employee of Company A.
- d. Company A is solely owned by an individual.
- e. The individual also owns Company B, which has, for many years, contracted with the Town to provide certain services.
- f. As part of his employment by Company A, the town chair sometimes provides services to the Town for Company B.
- g. Company B also provides other services to the Town pursuant to contract.
- h. The town chair acts as the Town's overseer for these services.

Questions

¶2 The Ethics Board understands your question to be:

Under §19.59, *Wisconsin Statutes*, what, if any, restrictions does the town chair's employment by Company A place on his participation in Town decisions regarding the services provided to the Town by Company B?

Discussion

¶3 You have expressed the view that the best course of action would be for the town chair to refrain from making decisions about services provided to the Town by Company B while that company contracts with the Town to provide these services. We agree.

Section 19.59, *Wisconsin Statutes*, generally prohibits a local public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for himself or herself or for an organization with which the official is associated or (2) from taking any official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest.¹ In addition, the statute prohibits a local public official from accepting anything of value “if it could reasonably be expected to influence the local public official’s vote, official actions or judgment.”² A member of a town board is a local public official subject to §19.59.³

Use of Office

¶4 Under the terms of the statute, an official is deemed associated with an organization if the official or a member of the official’s immediate family

“is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.”

§19.42(2), *Wisconsin Statutes*.

¶5 In the present case, the town chair is not associated, within the meaning of the statute, with either Company A or Company B. Thus, unless the town chair’s employment or compensation would be affected by the

¹ Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.59(1)(b), *Wisconsin Statutes*.

³ Under section 19.42(7u) (7w) and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective town office.

Town's decisions regarding plowing or road or ditch repair, §19.59(1)(a) and (c) are unlikely to serve as a bar to his participation in these decisions.

Influencing Judgment

¶6 Section 19.59(1)(b) provides that an official may not accept anything of value if it could reasonably be expected to influence the official's vote, actions, or judgment.⁴ In addition, a public officer owes an undivided duty of loyalty to the public whom he or she serves.⁵

¶7 In our view, common sense tells us that it is reasonable to expect an individual's judgment to be affected when acting on a matter in which the individual's employer has a demonstrated financial interest.⁶ Although the town chair works for Company A, his employer is the sole owner of both that company and Company B. Moreover, the concern is especially real when the town chair's job duties will be affected by the Town's decisions. Thus, the town chair should avoid participating in any decision affecting the performance of work for the Town by Company B.⁷

Advice

¶8 The Ethics Board advises that the town chair should not simultaneously participate in Town decisions concerning services provided to the Town by Company B and be employed by Company A.

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⁴ Section 19.42(1), *Wisconsin Statutes*, defines "anything of value," in relevant part, as

[A]ny money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment

⁵ 14 Op. Eth. Bd. 41 (1993); 14 Op. Eth. Bd. 25 (1992); 14 Op. Eth. Bd. 21 (1992); 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

⁶ 1994 Wis Eth Bd 05. *See also, e.g., Zagoreos v. Conklin*, 491 N.Y.S.2d (A.D. 1985); *Sokolinski v. Woodbridge Township Municipal Council*, 469 A.2d 96 (N.J. Super. A.D. 1983).

⁷ Our advice is consistent with the view of the courts expressed in several cases that if a local official votes on a contract in which the official's employer has an interest, the contract is void. *Heffernan v. City of Green Bay*, 266 Wis. 534 (1954) (if alderperson who voted to approve contract had been employee of individual's company when another company owned by the individual bid for the contract, the contract would have been illegal and void); *Edward E. Gillen Co. v. City of Milwaukee*, 183 N.W. 679 (Wis. 1921); *Ballenger v. Door County*, 131 Wis. 2d 422 (Ct. App. 1986).